

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBEY HAIRSTON,

Plaintiff,

v.

CDCR, et al.,

Defendants.

Case No. 1:20-cv-01226-JLT (PC)

**FINDINGS AND RECOMMENDATIONS
TO DENY PLAINTIFF'S MOTION TO
PROCEED *IN FORMA PAUPERIS* AND
DISMISS ACTION**

(Doc. 2)

14-DAY DEADLINE

Clerk of the Court to Assign a District Judge

Before the Court is Plaintiff's application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. 2.) Because Plaintiff has more than three "strikes" under section 1915(g) and fails to show that he is in imminent danger of serious physical injury, the Court recommends that his application be denied and this action dismissed.

I. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915

"In no event shall a prisoner bring a civil action ... under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

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1 **II. DISCUSSION**

2 The Court takes judicial notice of five of Plaintiff's prior cases that courts dismissed
3 because they were frivolous, malicious, or failed to state a claim on which relief may be granted:¹
4 (1) *Hairston v. Union Bank of California*, No. 5:14-cv-01299-UA-MAN (C.D. Cal. July 9, 2014);
5 (2) *Hairston v. Richardson, et al.*, No. 2:10-cv-07853-UA-MLG (C.D. Cal. Dec. 15, 2010);
6 (3) *Hairston v. California Lottery*, No. 2:10-cv-07851-UA-MLG (C.D. Cal. Dec. 15, 2010);
7 (4) *Hairston v. Bozanish, et al.*, No. 8:10-cv-01652-UA-MLG (C.D. Cal. Nov. 8, 2010); and
8 (5) *Hairston v. Judge Hudson, et al.*, No. 5:10-cv-00750-UA-MLG (C.D. Cal. May 28, 2010).

9 The courts dismissed these cases before Plaintiff initiated the current action on August 21, 2020.
10 Plaintiff is therefore precluded from proceeding *in forma pauperis* in this action unless, at the
11 time he filed his complaint, he was under imminent danger of serious physical injury. *See*
12 *Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th Cir. 2007).

13 The claims in Plaintiff's complaint are frivolous. Plaintiff states that he tested positive for
14 COVID-19 on August 11, 2020. (Doc. 1 at 3.) He alleges that, because he tested negative back in
15 June, prison healthcare personnel "lied" about and "falsifie[d]" the August test results, claiming
16 that he has COVID-19 when, in fact, he does not. (*Id.* at 3, 4, 5.) Plaintiff contends that prison
17 doctors and nurses "are committing fraud, discriminating on minorities." (*Id.* at 3, 4.)
18 Additionally, he alleges that he "should have had [his] ass[ault] case dismissed," and that
19 California judges conspired to commit fraud. (*Id.* at 4.) Plaintiff sues President Trump and
20 Governor Newsom, among others, for \$999 trillion for "false imprison[ment]" and "fraud." (*Id.*)

21 Plaintiff's allegations are fanciful and irrational. Plaintiff's complaint is therefore
22 frivolous, *see Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992), and accordingly fails to show that
23 he is imminent danger of serious physical injury. The complaint's frivolousness also provides an
24 alternative ground for dismissing this action. *See id.* at 31; 28 U.S.C. § 1915(e)(2)(B)(i).

25 **III. CONCLUSION AND RECOMMENDATIONS**

26 Based on the foregoing, the Court RECOMMENDS that:

27 1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) be DENIED; and,

28 ¹ The Court may take judicial notice of court records. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

3 The Court DIRECTS the Clerk of the Court to assign a district judge to this action.

4 These Findings and Recommendations will be submitted to the United States District
5 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**
6 of the date of service of these Findings and Recommendations, Plaintiff may file written
7 objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s
8 Findings and Recommendations.” Plaintiff’s failure to file objections within the specified time
9 may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
10 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **September 2, 2020**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE